

Neifeld Docket No: CAT/34-SCRO-US

Application/Patent No: 08/873,974

USPTO CONFIRMATION NO: 2461

File/Issue Date: 6/12/1997, CPA FILED AUGUST 17, 1999, PARENT FILED

Inventor/Title: SCROGGIE/SYSTEM AND METHOD FOR DISTRIBUTING INFORMATION
THROUGH COOPERATIVE COMMUNICATION NETWORK SITES

Examiner/ArtUnit: ROBINSON/3628

**37 CFR 1.7(c) FILING RECEIPT AND TRANSMITTAL LETTER WITH
AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT**

1. **THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE ANY FEES
WHICH MAY BE REQUIRED, OR CREDIT ANY OVERPAYMENT, TO DEPOSIT
ACCOUNT NUMBER 50-2106.**

2. **FEES (PAID HEREWITH BY EFS CREDIT CARD SUBMISSION) \$: 0**

A. CLAIMS FEES \$: 0

\$ 0- (claims previously paid for; currently present; \$50 per addl. claim over 20.)

\$ 0- (independent previously paid for; currently present; \$200 per addl. claim over 3)

B. APPEAL FEES \$: 0

3. **THE FOLLOWING DOCUMENTS ARE SUBMITTED HEREWITH:**

37 CFR 41.41 REPLY BRIEF

4. **FOR INTERNAL NEIFELD IP LAW, PC USE ONLY**

USPTO CHARGES \$: CLIENT BILLING MATTER: BANK ACCOUNT/Check: 6/ G/L ACCOUNT:5010	FIRM CHARGES \$: DESCRIPTION: FIRM CHARGE FOR LAWYER: ran
---	---

INITIALS OF PERSON WHO **ENTERED** ACCOUNTING DATA: ran

ATTORNEY SIGNATURE (AUTHORIZING DEPOSIT ACCOUNT)

DATE: 6/8/2009 **SIGNATURE:** /RichardNeifeld#35,299/

Printed: June 8, 2009 (6:21pm)

Y:\Clients\Catalina\CAT-34-SCRO\CAT34-SCRO-US\Drafts\ReplyBrief_CAT-34-SCRO-US_6
-8-2009.wpd

Neifeld Docket No: CAT/34-SCRO-US

Application/Patent No: 08/873,974 USPTO CONFIRMATION NO: 2461

File/Issue Date: 6/12/1997, CPA FILED AUGUST 17, 1999, PARENT FILED

Inventor/Title: SCROGGIE/SYSTEM AND METHOD FOR
DISTRIBUTING INFORMATION THROUGH COOPERATIVE COMMUNICATION
NETWORK SITES

Examiner/ArtUnit: ROBINSON/3628

ASSISTANT COMMISSION FOR PATENTS

WASHINGTON, D.C. 20231

37 CFR 41.41 REPLY BRIEF

SIR: In response to the examiner's answer dated 5/29/2009, the applicant files this reply brief.

REMARKS

I. CLAIM 60 REPEATED FOR CONVENIENCE

Claim 60 reads as follows:

60. (Previously Presented) A process for distributing product incentives to consumers over a communication network, comprising:

- storing at least one of (i) manufacturer incentives to purchase one of a product and a service offered by a manufacturer and (ii) retailer incentives to purchase one of a product and a service offered by a retailer at a cooperative network site;
- coupling at least one of a manufacturer network site and a retailer network site to said cooperative network site via said communication network;
- coupling a consumer computer to one of said manufacturer network site and retailer network site via said communication network; and
- transmitting from said cooperative network site at least one of said manufacturer incentives and retailer incentives to said consumer over said communication network, in response to a consumer request made over said communication network from one of said manufacturer network site and retailer network site.

II. RESPONSE TO NEW ARGUMENTS IN EXAMINER'S ANSWER

The examiner's answer pages 1-28 regurgitate the arguments presented in the appealed from office action dated 5/23/2008. The examiner's answer pages 29 et seq contain the examiner's new arguments in response to the reasoning in the appeal brief. This reply brief addresses only those allegedly new arguments, to the extent they are not already addressed in the appeal brief.

A. WHY JOVICIC'S ICNC DOES NOT CORRESPOND TO THE CLAIMED MANUFACTURER OR RETAILER NETWORK SITE

In the paragraphs spanning pages 29 and 30, the examiner's answer:

(1) corresponds Jovicic's Internet Coupon Server with the claimed "cooperative network site"; and

(2) corresponds Jovicic's ICNC with the claimed "retailer network site".

The appellant disagrees on correspondence (2). As noted in the appeal brief, a single network site providing coupon serving and ICNC functions cannot correspond to claim 60's

limitations.

For example, Jovicic does not disclose the ICNC coupled to the consumer computer. In contrast, claim 60 recites "coupling a consumer computer to one of said manufacturer network site and retailer network site via said communication network; ". Since Jovicic does not disclose the consumer computer communicating with the ICNC, Jovicic does not disclose or suggest this claimed coupling step.

For another example, Jovicic does not disclose a consumer request from the consumer computer transmitted over the communication network to the ICNC, and therefore does not disclose an ICNC responding to a consumer request directed to the ICNC. Therefore, Jovicic does not disclose claim 60's manufacture or retailer network site acting in response to a consumer request transmitted to the retailer or manufacturer network site. Claim 60 defines this limitation with the recitation "transmitting ..., *in response to a consumer request made over said communication network* from one of said manufacturer network site and retailer network site." Specifically, the recitation "from one of said manufacturer network site and retailer network site" requires a response from the manufacturer or retailer network site to receipt at that site of data transmitted from the consumer computer. Jovicic discloses nothing of the kind.

In this regard, the examiner has made a fundamental *technical factual error*, in analysis. In the paragraph spanning examiner's answer pages 33 and 34, the examiner incorrectly concludes that because the ICNC is part of a public network, it must be running "web server software to communicate through the system, and therefore must at least have web server functionality." That assertion of fact and factual conclusion are fundamentally wrong. A computer on a public network does not have to be running web server software to communicate through that network with other computers. In fact, running Web server software would be a stupid way to transmit data between computers because there is no need for graphical formatting of data transmission, which is what Web servers provide, and the formatting language, HTML, used for Web page transmission, is inherently ambiguous because (1) HTML does not require closed tags and therefore has alternative expressions of the same graphical content, and (2) requires tags defining graphical information, where on a screen, and how to display data for a human to view. In contrast for example XML is a form of markup data transmission that does not require graphical data and uses closed tags.

Accordingly, the examiner's legal conclusions are flawed by apparent lack of understanding that the ICNC is not inherently a web server, does need require Web server functionality to perform the tasks specified for it in Jovicic, and that such functionality would be

a poor choice for the tasks specified for it in Jovicic.

B. THE CLAIMS REQUIRE THREE NETWORK SITES

In the paragraphs spanning pages 29 and 30, at the top of page 30, the examiner's answer argues that "the present claims do not require three network sites as claimed" because the claims require only one of a manufacturer network site and a retailer network site. In response, the appellant notes that examiner has failed to understand that the "consumer computer" is a network site, since it is coupled to other computer by the communication network. See claim 60 "coupling a consumer computer to one of said manufacturer network site and retailer network site via said communication network" and claim 50 "consumer computer coupled to one of the manufacturer and retailer network sites via said communication network." The "consumer computer" is the third network site to which the appellants remarks are and have been directed.

In the paragraph spanning pages 30 and 31, the examiner's answer argues that the transmission from a consumer computer to a cooperative network site that also runs software to function as the ICNC, means that "the consumer request can be directed towards the combined unit, and therefore can also be made to the retailer's site." The appellant disagrees because the claims require (1) the claims define distinct network sites for the cooperative network site and the retailer or manufacturer network site, and (2) transmitting from Jovicic's computer 102 (consumer) to Jovicic Coupon Server does not couple the claimed consumer computer to the ICNC.

As noted above, nothing in Jovicic discloses or suggests the consumer communicate to the ICNC. Accordingly, even if the ICNC software is resident on the same physical computer as the Coupon Server, that fact that the consumer communicates with the coupon server software does not mean that the consumer communicates, or has an open communication path, with the ICNC. Therefore, Jovicic does not disclose the claimed "coupling a consumer computer ..." to Jovicic's ICNC. Therefore, Jovicic's transmitting from Jovicic's computer 102 (consumer) to Jovicic Coupon Server does not couple Jovicic's computer 102 to Jovicic's ICNC.

Moreover, the examiner's claim construction ignores that the applicant's claims recite distinct network sites for the cooperative network site and the retailer or manufacturer site, and that recitation corresponds to what the applicant's specification discloses, as shown in Figure 1: three separate computer systems, the SMO web server (cooperative site), the consumer computer (items 1/5), and the Retailer (or manufacturer) Web Site(s) 2. See appeal brief section 7.1.3.

Moreover, any reasonable claim construction must give meaning to all words of a claim, and the examiner's construction fails that requirement; it does not credit recitations "retailer network site" and "cooperative network site" to mean distinct network sites. Accordingly, the examiner's implied claim construction is incorrect, and as a result, the rejection is improper.

C. ADDITIONAL ISSUES

The examiner's answer page 31 middle paragraph uses the word "However," instead of an assertion that the corresponding facts stated in the brief are false, to raise an inference that the asserted facts are false. The corresponding recitation in the appeal brief is:

Fig. 1 does not suggest communications between user computer 102 and redemption center 142. Moreover, Jovicic does not indicate that user computer 102 communicates with redemption center 142. Furthermore, Jovicic does not suggest that redemption center 142 is a retailer or wholesaler network site. [Brief page 22 lines 10-13.]

The assertions in the brief are accurate. The panel should ignore the inference case by that "However..." statement in the examiner's answer.

The examiner answer page 31 last line concludes that "that the consumer can communicate with the ICNC." However, that conclusion does not follow from the asserted facts. Jovicic does not disclose or suggest the consumer communicating with the ICNC, and merely incorporating the ICNC software into the same computer running the Coupon Server software does not imply to the contrary.

The examiner's answer page 33 middle paragraph fails to provide any reasoning relating to obviousness.

D. CLAIM 64

For convenience, claim 64 reads:

60. (Previously Presented) A process for distributing product incentives to consumers over a communication network, comprising:

storing at least one of (i) manufacturer incentives to purchase one of a product and a service offered by a manufacturer and (ii) retailer incentives to purchase one of a product and a

service offered by a retailer at a cooperative network site;

coupling at least one of a manufacturer network site and a retailer network site to said cooperative network site via said communication network;

coupling a consumer computer to one of said manufacturer network site and retailer network site via said communication network; and

transmitting from said cooperative network site at least one of said manufacturer incentives and retailer incentives to said consumer over said communication network, in response to a consumer request made over said communication network from one of said manufacturer network site and retailer network site.

64. (Previously Presented) The process of claim 60, further comprising:

transmitting from said cooperative network site incentive data for manufacturer offers available at said retailer to said consumer via said retailer network site, in response to a query from said consumer made over said communication network from said retailer network site;

transmitting by said consumer incentive selection data selected from said incentive data to said cooperative network site via said retailer network site; and

transmitting from said cooperative network site incentives corresponding to said selection data to said consumer via said retailer network site.

The examiner's answer at page 34 first asserts that claim 64 does not define geographically limited data. In response, the appellant agrees. The corresponding language in the appeal brief was imprecise, dealing with the concept of retailer stores generally being localized.

The examiner's answer at page 34 next asserts that "the rest of appellants arguments pertaining to claim 64 relate to arguments discussed above with respect to claim 50 and are therefore still rejected for the same reasons." In response, the appellant disagrees.

The appeal brief at section 7.1.9 in fact points out that "transmitting from said cooperative network site incentive data for manufacturer offers available at said retailer to said consumer via said retailer network site, in response to a query from said consumer made over said communication network from said retailer network site" is not disclosed by Jovicic. The examiner's answer contains no rebuttal.

The appeal brief at section 7.1.10 also notes that Jovicic does not disclose "transmitting by said consumer incentive selection data selected from said incentive data to said cooperative

network site via said retailer network site". The examiner's answer contains no rebuttal.

The appeal brief at section 7.1.11 also notes that Jovicic does not disclose "transmitting from said cooperative network site incentives corresponding to said selection data to said consumer via said retailer network site." The examiner's answer contains no rebuttal.

Respectfully Submitted

6-8-2009

/RichardNeifeld#35,299/

Richard Neifeld, Registration No. 35,299

Attorney of Record

ran

date/time code: June 8, 2009 (6:21pm)

Y:\Clients\Catalina\CAT-34-SCRO\CAT34-SCRO-US\Drafts\ReplyBrief_CAT-34-SCRO-US_6-8-2009.wpd